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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,864	09/05/2003	Luc Laloy	1418-137	8101
24106	7590	12/28/2005	EXAMINER	
EGBERT LAW OFFICES 412 MAIN STREET, 7TH FLOOR HOUSTON, TX 77002			HANEY, RICHALE LEE	
		ART UNIT		PAPER NUMBER
		3765		

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tooth

Office Action Summary	Application No.	Applicant(s)	
	10/656,864	LALOY ET AL.	
	Examiner Richale L. Haney	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 October 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
 - 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 11-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claim 10/17/2005 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351

2. Claims 11 and 13 – 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Park (US 6,446,266). The device of Park shows a headdress (1) having a visor extending therefrom (2) having a cutout extending over at least a portion of a periphery thereof (See figure 1), an elastic band (Figure 3, 3, 5) extending along the entire periphery of the hat (Figure 3), wherein the elastic band is cooperative and visible at the cut out (Figure 1, Figure 3) and has a height dimension substantially equal to the width dimension. The cutout is defined by a selvedge line extending substantially parallel to the lower rim of the hat (See figure 1) wherein the cutout has a height dimension between the selvedge line and the lower rim. It is noted by the examiner that selvedge is defined as an outer or peripheral part; an edge meant to be cut off or discarded. A

majority of the cut out portion is depicted to be substantially parallel to the lower rim of the cap (see Figures 1 and 2) before tapering off into a crescent shape. It can be seen that the elastic band has an upper rim and lower rim, wherein the upper rim is sewn to a portion of the selvedge line (As shown in Figure 3, where dash lines indicate stitching) and a lower rim that is stitched to the front of the headdress. The headdress of Park is both band shaped and semi-spherical (See Figure 1) comprising a non-stretch woven fabric. The device of Park does not specifically disclose the manufacture of the visor portion; however, the insertion of a rigid panel is an obvious modification and inherently necessary to perform the function of maintaining shape and providing protection from the sun.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 6,170,086) in view of Brown et al. (US 4,630,317) and Seldner (US 357,418). The device of Lee discloses a headdress (10) with a visor (14) extending therefrom, having a least one semi-crescent cut-out extending over at least a portion of the periphery (18), the headdress having a lower rim, and an elastic member (18) being cooperative with

said headdress at the cutout wherein the elastic member has one side sewn to the headdress at one side of the cutout and having another side sewn to the headdress at an opposite side of the cutout. Lee is seen to be lacking an elastic band extending along the entire periphery of the headdress on an interior side of the elastic member and the position of the cutout member extending from summit to the lower rim. The device of Seldner (357,418) shows an elastic portion extending from the summit portion to the lower rim. The device of Brown et al. discloses a removable type elastic band on the interior portion of a headdress (36). It would have been obvious to one of ordinary skill at the time the invention was made to modify the device of Lee by incorporating an elastic sweatband as taught by Brown et al. and the position of the elastic member taught by Seldner in order to provide a means for absorbing perspiration and obtaining stretch to fit a variety of headsizes.

3. Applicant's arguments filed 10/17/2005, regarding claim 12, have been fully considered, but are not found persuasive. Applicant submits that the elastic band of claim 12 extends over a cut out from the summit to the lower rim and is sewn along the edges of the cut out to be visible from the exterior of the cap. Claim 12, "an elastic band extending along the entire periphery of said headdress; and an elastic member cooperative with headdress at said cutout so as to visible from and exterior of said headdress at said cut out..." interpreted in the broadest reasonable sense recites a limitation of two distinct elements "elastic band" and "elastic member." Modifying a reference by adding an elastic band around the entire periphery would have been an

obvious modification, in as much, as elastic sweatbands are well known in the art. The combination of Lee and Seldner discloses the remaining limitations.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney
Patent Examiner
Art Unit 3765
December 16, 2005

RLH



JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
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